

Testimony of
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Before the

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Thank you Mr. Chairman, Mr. Co-Chairman and Members of the Committee. My name is Ben Pyne and I am the President of Disney and ESPN Networks Affiliate Sales and Marketing. In that capacity I supervise negotiations for the distribution of all of the Disney and ESPN cable and satellite services as well as retransmission consent negotiations for the ABC television stations.

This afternoon I would like to make three simple and direct points:

1. There is widespread and authoritative agreement that a la carte distribution of cable and satellite programming networks would increase costs and drain revenues within the distribution system with the result that consumers would pay more and get less.
2. Our company offers our ABC station programming, Disney Channel and ESPN individually to cable and satellite operators and we do not require operators to take any other services to get ABC, Disney Channel or the ESPN network.
3. Finally, retransmission consent represents the fundamentally American business principle that if another business wants to commercially exploit content that we

have created and assembled, they need to first get our permission. Our retransmission consent negotiations reflect our interest in a fair exchange of value for either cash or carriage of other of our services in ways tailored to expand our distributor's service to their customers and otherwise meet their needs.

Let's start with a la carte. Some would have you believe that a la carte is a panacea for every perceived ill from cable rates to indecency. In fact, it is not. The expanded basic bundle has emerged as the most prevalent form of subscription television offering because it provides great value to the consumer and is the most economically efficient way to deliver the product. A la carte would both increase costs and drain revenues from the system so that even consumers who selected only a few channels would pay more than they pay today for expanded basic. Costs would rise because of the need to provide expensive addressable set-top boxes on every consumer television set and because individual networks would need to dramatically increase promotional expenditures. Revenues would be drained because advertisers on both the national and local level would flee from channels with significantly reduced distribution. The record in the a la carte proceeding at the Federal Communications Commission contains letters from leading advertising agencies confirming the likely drop in advertising revenue. Of course, a model that increases cost and decreases ad revenue inevitably leads to higher consumer prices. That is why expanded basic is rightly, and so widely, perceived to be more economically efficient and better for consumers.

There is a broad and authoritative consensus that a la carte is not the answer. A completely independent study conducted by the General Accounting Office did not embrace a la carte. The leaders of popular American sports organizations including

Major League Baseball, The National Hockey League, The National Football League and The Big Ten Conference all submitted letters to the FCC opposing a la carte. Ten leading economists including Gustavo Bamberger, Michael Baumann, Jay Ezrielev, John Gale, Tom Hazlett, Michael Katz, Kent Mikkelsen, Jonathon Orszag, Bruce Owen and Robert Willig, representing a broad cross-section of economic philosophy, filed with the FCC stating that a la carte distribution “would harm consumers, programmers, MVPDs, and overall economic efficiency.”

Various financial analysts have similarly concluded that a la carte makes little sense for consumers or as a business proposition. A December 2005 Sanford Bernstein report noted that if Viacom’s BET service was offered a la carte and every African-American family in America (17% of our population) subscribed to it, “its monthly price (i.e., affiliate fee) would need to rise by 588% for BET to remain revenue neutral. If just half opted in – still a wildly optimistic scenario – then the price would rise by 1,200%.”

It is for this reason that in addition to these groups, the Congressional Black Caucus (letter attached) and others concerned with the diversity of voices in our media have also raised strong opposition to a la carte. Niche programming services will clearly suffer or cease to be available in an a la carte world.

The Bernstein reports sums it up as follows:

“The result would be monthly cable bills similar to today’s but with each customer receiving a small number of channels for roughly the same total price as the large number they get today. Many niche programming options would cease to exist. And new channel launches would likely stop altogether (who would opt for a channel they never heard of?).”

But you don’t need to rely on economic theory or analysis. Disney has actual experience with a la carte distribution of the Disney Channel and we can confirm that

expanded basic distribution produces far greater consumer welfare. Originally Disney Channel was offered a la carte available only to those children and families who could afford to pay an additional \$10 to \$16 dollars per month just for it. Despite the strength of the Disney brand, penetration hovered on average in the 9-10% range. Subscriber turnover ran about 5% to 6% per month or more than 60% per year requiring massive promotional expenditures to replace lost subscribers. Today, Disney Channel is offered on expanded basic in more than 87 million cable and satellite homes. This expanded distribution has enabled us to improve our programming, increase our ratings and serve a broad and diverse cross section of American families.

In sum, the GAO, America's major sports institutions, 10 leading and diverse economists, Wall Street and Disney's own experience all demonstrate that a la carte is not the answer.

Turning to the allegation of "bundling" channels, I want to assure you that the most popular ABC, ESPN and Disney services can be licensed individually by cable and satellite operators. An operator that wishes to carry just ESPN or just ABC or just Disney Channel may do so without any obligation to carry any other service or network that we own. Of course, like any other American business, the more of our services you buy, the more flexible we will be on pricing and the more overall value we will bring.

Turning to retransmission consent, some have argued that retransmission consent is a government intervention into the free market that is causing unanticipated consequences. Nothing could be further from the truth. The only requirement of this law is that before one business entity commercially exploits the product of another business entity, it must negotiate for permission. It is hard to imagine a more fundamental principle of American

business. In its report on the Cable Television Consumer Protection Act of 1991, this Committee observed that, “cable systems use these [broadcast] signals without having to seek the permission of the originating broadcaster or having to compensate the broadcaster for the value its product created for the cable operation.”¹ In explaining the new retransmission consent requirements, this Committee stated “cable operators pay for the cable programming services they offer to their customers; the Committee believes that programming services which originate on a broadcast channel should not be treated differently.”² Further, this Committee specifically anticipated that the compensation paid by the cable operator to the broadcast station could take the form of “the right to program an additional channel on a cable system.”³

Our opponents would have you believe that the broadcast networks dominate and abuse the retransmission consent process nationwide. But, this cannot be true. ABC owns only 10 television stations. The other 215 stations that comprise the ABC television network are owned by other broadcasting companies. As a result, our company is only involved in retransmission consent negotiations with cable and satellite operators in 10 markets across the country. We are not even in the room for the retransmission consent negotiation in the other 215 markets.

In the 10 markets where we do negotiate retransmission consent, we strive to strike a fair bargain. ABC invests more than \$3 billion annually to create or acquire programming. It is plainly unreasonable for any distributor to expect to take that product and sell it to consumers without compensating us. We offer tremendous flexibility in the kinds of compensation that we are willing to accept. First, in the 10 markets where we

¹ Senate Report 102-92, Cable Television Consumer Protection Act of 1991 at 35.

² Id.

³ Id.

are a part of the negotiation, we always offer a cash stand alone option for carriage of just our ABC station. Notwithstanding an economic study that would support a significantly higher price, during the next retransmission consent cycle ending in 2008, our cash price remains under \$1 a subscriber, an amount that is exceedingly reasonable by any marketplace comparison. That study by Economists, Inc. which is supported by three different analytic approaches, is attached to my testimony.

Unfortunately, immediately after the enactment of retransmission consent, the major cable operators announced that they would not pay cash retransmission consent fees to broadcasters. For example, on August 18, 1993 the Wall Street Journal reported that “nearly all of the nation’s largest cable operators have vowed to forego paying cash to local TV stations.” This prospective refusal to pay cash for retransmission rights was so uniform that the co-Chairman of this Committee, Senator Inouye, asked the Justice Department and the Federal Trade Commission to investigate whether the cable companies had violated anti-trust laws by improperly colluding with each other. Faced with the refusal of cable operators to pay cash, broadcasters accepted from operators the opportunity to program other channels as the consideration for broadcast retransmission rights. Broadcasters bargain for carriage of local news channels, local weather channels or other channels that they own. The facts are clear. The practice of granting broadcast retransmission consent in return for carriage of commonly owned cable channels (1) is simply an alternative to the always available cash stand-alone option; (2) was specifically anticipated and approved in the Senate report, and (3) was insisted on by the cable operators themselves.

Finally, in our retransmission consent negotiations we have been extraordinarily flexible with smaller operators. Currently, we have over 100 separate agreements in place with small operators dealing with over a dozen Disney or ESPN product lines, covering everything from linear program services to broadband and pay per view. A couple of small operators have even agreed to pay cash for retransmission consent. Our mission is clear: to get these deals done using a reasonable approach in each circumstance and we have been quite successful in that effort. That is not surprising given the value of the programming we produce and the very positive relationship we have built with the small operator community and the National Cable Television Cooperative (NCTC). While each retransmission consent negotiation has traditionally been handled on an individual system or company basis, the overall relationship we have cultivated with the NCTC over many years is reflected in the umbrella purchasing agreements we have with them for rights to our non-broadcast programming services. Through those agreements, its members, representing 8 million subscribers, get the same volume discount opportunities we offer our large MSO customers in negotiations for our cable and satellite products and services.

Thank you.